

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals of the District of Columbia.

OCTOBER TERM, 1919.

No. 333 **614**

ROBERT L. DORSEY, APPELLANT,

vs.

DISTRICT OF COLUMBIA, A MUNICIPAL CORPORATION,
AND EDWIN B. HESSE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED NOVEMBER 25, 1919.

PRINTED DECEMBER 2, 1919.

Court of Appeals of the District of Columbia.

OCTOBER TERM, 1919.

No. 3334.

ROBERT L. DORSEY, APPELLANT,

vs.

DISTRICT OF COLUMBIA, A MUNICIPAL CORPORATION,
AND EDWIN B. HESSE, APPELLEES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

INDEX.

	Original.	Print.
Caption	<i>a</i>	1
Declaration	1	1
Writ of replevin.....	2	2
Marshal's return.....	3	3
Receipt of T. M. Wampler.....	3	3
Motion for return of property.....	3	3
Affidavit of Edwin B. Hesse.....	4	4
Motion for return of property replevied granted.....	5	4
Property seized ordered to be returned by U. S. marshal; appeal noted	6	5
Memoranda: Supersedeas bond fixed; supersedeas bond ap- proved and filed.....	6	5
Assignment of errors.....	6	5
Designation of record.....	7	5
Clerk's certificate.....	8	6

Court of Appeals of the District of Columbia.

No. 3334.

ROBERT L. DORSEY, Appellant,

vs.

DISTRICT OF COLUMBIA, &c., et al.

a Supreme Court of the District of Columbia.

At Law. No. 62951.

ROBERT L. DORSEY, Plaintiff,

vs.

DISTRICT OF COLUMBIA, a Municipal Corporation, and EDWIN B.
HESSE, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it Remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Declaration.*

Filed October 16, 1919.

In the Supreme Court of the District of Columbia.

At Law. No. 62951.

ROBERT L. DORSEY, Plaintiff,

vs.

DISTRICT OF COLUMBIA, a Municipal Corporation, and EDWIN B.
HESSE, Defendants.

The plaintiff, Robert L. Dorsey, sues the defendants, District of Columbia, a Municipal Corporation, and Edwin B. Hesse, for wrongfully taking and detaining his, the said plaintiff's, goods and

chattels, to-wit: eighteen (18) cases of whiskey, one (1) case of beer, two (2) quarts of gin, of the value of Six Hundred dollars (\$600.00). And the plaintiff claims that the same may be taken from the defendants and delivered to him; or if they are eloigned, that he may have judgment of their said value and all mesne profits and damages which he estimates at Six Hundred dollars (\$600.00), besides costs.

T. M. WAMPLER,
Attorney for Plaintiff.

DISTRICT OF COLUMBIA, ss:

Robert L. Dorsey, the plaintiff in the above action, being first duly sworn made oath that he is the plaintiff in this suit and that according to his information and belief, he is entitled to recover possession of the chattels proposed to be replevied, being the same described in the above declaration. That the said defendants have seized and detained the same; and that the said chattels were not subject to such seizure or detention and were not taken upon
2 any writ of replevin between the parties.

ROBERT L. DORSEY.

Subscribed and sworn to before me this 15th day of October, 1919.

J. R. YOUNG,

Clerk.

By ALF. G. BUHRMAN,

Ass't Clk.

Writ of Replevin.

Issued October 16, 1919.

* * * * *

The President of the United States to the Marshal for said District,
Greeting:

The plaintiff in this action having entered into an undertaking, with surety as required by law, you are therefore hereby commanded to take the goods and chattels claimed by the Plaintiff, to wit: Eighteen (18) cases of whiskey, One (1) case of beer, Two (2) quarts of gin, which chattels are of the value of Six hundred dollars from the Defendants and deliver the same to the Plaintiff. And warn the Defendant to appear in said court on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of the service of this writ, and answer said action; and that if he make default in so doing the Plaintiff may proceed to judgment and execution.

Witness, The Honorable Walter I. McCoy, Chief Justice of said Court, the 16th day of October, A. D. 1919.

[SEAL.]

J. R. YOUNG,

Clerk.

By ALF. G. BURHMAN,
Assistant Clerk.

3

Marshal's Return.

Replevied as per schedule filed herewith October 16, 1919—Served copies of declaration, summons and notice to plead on defendant E. B. Hesse, Oct. 16, 1919 and on Com'rs of D. C. on W. G. Gardiner Com'r Oct. 20/19—Turned property over to Pl'ff's Att'y Nov. 4, 1919—See his receipt on back of writ.

MAURICE SPLAIN,
U. S. Marshal.

R.

(Endorsed.)

Nov. 4, 1919.

Received of Maurice Splain, U. S. Marshal, the whiskey referred to in the schedule hereto attached, and seized by the Marshal under the within Writ of Replevin.

T. M. WAMPLER,
Att'y for Plaintiff.

Motion for Return of Property.

Filed October 20, 1919.

* * * * *

Now comes Edwin B. Hesse, one of the defendants named in the above entitled cause, by his attorneys, and moves the Court to pass an order directing the United States Marshal for the District of Columbia to return to him the property replevined herein, for the reasons appearing in the affidavit herewith as part hereof.

C. H. SYME,
F. H. S.
F. H. STEPHENS,
Attorneys for Defendants.

4 To Mr. T. M. Wampler, Attorney for Plaintiff:

Please take notice that we have filed the foregoing motion, and will call the same for hearing on October 24th, 1919, at 10 o'clock

A. M. or as soon thereafter as counsel can be heard in the Circuit Court.

C. H. SYME,
F. H. S.,
F. H. STEPHENS,
Attorneys for Defendants.

Affidavit.

* * * * *

DISTRICT OF COLUMBIA, ss:

Personally appears Edwin B. Hesse, who, being first duly sworn according to law, deposes and says: That he is the Property Clerk of the Metropolitan Police Department of the District of Columbia; that as such Property Clerk he is charged by law with the duty of keeping all property or money alleged or supposed to have been feloniously obtained, or which shall be lost or abandoned, and which shall be thereafter taken into the custody of any member of the police force, or the police or criminal court of the said District, or which shall come into such custody, and which shall be, by such member of said police force or by order of either of said courts, given into his, affiant's custody; that affiant's duty in connection with all property thus given into his custody, which is alleged or supposed to have been feloniously obtained or to be the proceeds of crime, is to retain the same until the accused persons are duly discharged or convicted.

5 Affiant further says that the property replevined herein consists of intoxicating liquor brought into the District of Columbia in violation of the Act of February 24, 1919 (39 Stat., 1069) commonly known as the Reed Law; and that the person accused of said violation of law in connection therewith has not been discharged from custody or convicted, but said charges are still pending before the Police Court of the District of Columbia.

And affiant further says that at the time of the service of the writ of replevin issued herein upon him the property mentioned in said writ was in his possession and custody as said Property Clerk and was so held by him as evidence of crime and he claims the right to retain the same under the provisions of the statute in such case made and provided.

EDWIN B. HESSE.

Subscribed and sworn to before me this 18th day of October, 1919.

[SEAL.]

JAMES C. WILKES,
Notary Public, D. C.

Supreme Court of the District of Columbia.

Monday, October 27th, 1919.

Session resumed pursuant to adjournment, Hon. F. L. Siddons, Justice presiding.

* * * * *

Upon consideration of the motion of defendants filed herein for return to them of the property replevied in this cause, it is ordered that said motion be granted. Wherefore, it is ordered that the United States Marshal forthwith return the property seized by him under the Writ of Replevin issued herein, to said defendants.

6 Thereupon, plaintiff by his attorney, in open court, notes an appeal, and upon motion the penalty of a bond for costs is hereby fixed in the sum of One Hundred Dollars (\$100.00) with leave to deposit the sum of \$50.00 with the clerk, in lieu thereof.

Memoranda.

November 3, 1919.—Supersedeas bond fixed.

November 4, 1919.—Supersedeas bond approved and filed.

Assignment of Errors.

Filed November 13, 1919.

* * * * *

Now comes the plaintiff, Robert L. Dorsey, and assigns as error committed by the trial court in the above entitled cause, as follows:

1. Sustaining the motion of the defendants for a return of the property to them.
2. In entertaining and considering the said motion, because the same does not comply with law.
3. In entering the judgment upon the said motion, because the said motion was not properly before the court.

T. M. WAMPLER,
Attorney for Plaintiff.

7 *Designation of Record.*

Filed November 13, 1919.

* * * * *

The Clerk of the Supreme Court of the District of Columbia will please prepare transcript of record upon appeal in the above entitled cause, and the following papers are hereby designated as necessary to be copied in the said record:

1. The declaration.
2. The writ of replevin, and the return of the United States Marshal.
3. The motion of the defendant for the return of the property to it, together with the affidavit thereto attached.
4. The judgment of the court upon the said motion.

5. Memorandum: Appeal noted in open court and supersedeas bond fixed.

6. Memorandum: Supersedeas bond approved and filed.

T. M. WAMPLER,
Attorney for Plaintiff.

8

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,

District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 7, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 62951 at Law, wherein Robert L. Dorsey is Plaintiff and District of Columbia, et al., are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 20th day of November, 1919.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG,

Clerk.

By W. E. WILLIAMS,

Assistant Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 3334. Robert L. Dorsey, appellant, vs. District of Columbia, &c., et al. Court of Appeals, District of Columbia. Filed Nov. 25, 1919. Henry W. Hodges, Clerk.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

JAN 19 1920

Henry C. Hodges.
Clerk

IN THE
Court of Appeals, District of Columbia

OCTOBER TERM, 1919.

No. 3334.

ROBERT L. DORSEY, *Appellant*,
vs.
DISTRICT OF COLUMBIA, A MUNICIPAL CORPORATION, AND
EDWIN B. HESSE, *Appellees*.

BRIEF FOR APPELLANT.

T. MORRIS WAMPLER,
FOSTER WOOD,
Counsel for Appellant.

IN THE
Court of Appeals, District of Columbia

OCTOBER TERM, 1919.

No. 3334.

ROBERT L. DORSEY, *Appellant*,
vs.
DISTRICT OF COLUMBIA, A MUNICIPAL CORPORATION, AND
EDWIN B. HESSE, *Appellees*.

BRIEF FOR APPELLANT.

STATEMENT OF FACTS.

The appellant, plaintiff below, brought an action of replevin against the appellees, for the recovery of a quantity of whiskey which had been taken from the appellant by police officers of the District of Columbia, claiming that the property was brought into the District in violation of the Reed law (Act of February 24, 1919, 39 Stat. 1069; Record p. 4).

Though the property was thus taken by the police in

March, 1919, no charge of the violation of any law has to this date been made against appellant, nor has any information been filed or indictment returned against him, in connection with the said property.

The writ of replevin duly issued and the property described in the declaration was seized by the U. S. Marshal, on October 16, 1919. On October 20, 1919, *four days* after the property was seized, the appellee, Hesse, filed a motion for the return of the property to him, (Record, p. 3) for the reasons set forth in the affidavit filed with said motion, and from the order entered upon this motion, this appeal is prosecuted.

ARGUMENT.

I.

The motion should have been either sustained or overruled. Neither was done. One of two defendants moved for a return of the property to him; upon the hearing of *his* motion, the Court ordered the property returned to *both* defendants. (Record, p. 5.)

II.

The said motion should not have been entertained or considered because no notice as required by Sec. 1557 D. C. Code, was ever given the plaintiff or his attorney. This want of notice was pressed before the lower Court and the claim was never made, there or elsewhere, that any notice was ever given as required by the said section. While there appears appended to the motion (Record, p. 3) a notice of the filing of the same, addressed to the attorney for appellant, it nowhere appears in the record that

either the appellant or his attorney ever received said notice, and the fact is they did not, nor was any effort ever made to bring the same to the attention of the appellant or his attorney.

The return to the defendant of the property seized under a writ of replevin, is a privilege, conferred by the statute, to be entitled to which the moving party must show that he has complied with the conditions imposed by the statute. It is submitted that the notice required by Sec. 1557 D. C. Code, cannot be ignored, even by the police of the District, who are amenable to the laws just as the private citizen, notwithstanding their conduct would indicate they think otherwise, and the giving of the notice, thus required by law, must affirmatively appear before the Court may be asked to enter an order changing and affecting the possession of property.

III.

The reasons set forth in the affidavit of Appellee Hesse (Record p, 4) to warrant the Court in ordering a return of the property to him, afford no justification as a matter of law.

The reasons are:

He is Property Clerk of the Police Department and as such is charged by law with the duty of keeping all property * * * *alleged or supposed to have been feloniously obtained or which shall be lost or abandoned. * * ** affiant's duty in connection with all property thus given into his custody, which is alleged or supposed to have been feloniously obtained or to be the proceeds of crime, is to retain the same until the accused persons are duly discharged or convicted.

Where is there one word to show that it is now, as ever has been claimed, that the property sued for was—

- (1) feloniously obtained, or
- (2) was the *proceeds* of crime or
- (3) was lost or abandoned.

The affiant says (Record, p. 4) that this property was brought into the District of Columbia in violation of the Reed law. Not that it was "lost or abandoned," or was "feloniously obtained," or was "the proceeds of crime," but was property brought into the District in violation of a law which prohibited its being brought here.

The statute, from which the property clerk of the District Police Department derives his authority is found in Rev. Stat. Relating to the District of Columbia, p. 48 and which provides:

Sec. 408: "There shall be an officer known as property clerk" of the Metropolitan police"
* * *

Sec. 409. "All property, or money alleged or supposed to have been feloniously obtained, or which shall be lost or abandoned, and which shall be thereafter taken into the custody of any member of the police force * * * shall be given into the custody of the property clerk and kept by him."

Sec 414. "Whenever property or money shall be taken from persons arrested, and shall be alleged to have been feloniously obtained, or to be the proceeds of crime" * * *.

The statute is in derogation of property rights, it must be strictly construed.

MacFarland v. Moore, 32 App. D. C., 213, 216.

The appellee Hesse claims in his affidavit a right to hold this property "*as evidence of crime.*" There is no justification in law for such a claim.

There is no authority in law for the detention of this property by the defendants: there is no reason disclosed by the record in this case, justifying the order which was entered.

Respectfully submitted, ,
T. MORRIS WAMPLER,
FOSTER WOOD,
Counsel for Appellant.

COURT OF APPEALS
DISTRICT OF COLUMBIA

~~FILED~~

FEB 11 1920

IN THE

Henry W. Hodges.
Court of Appeals, District of Columbia.

JANUARY TERM, 1920.

No. 3334.

ROBERT L. DORSEY, APPELLANT,

vs.

DISTRICT OF COLUMBIA, A MUNICIPAL CORPORATION,
AND EDWIN B. HESSE, APPELLEES.

F. H. STEPHENS,
Attorney for Appellees.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C.

IN THE
Court of Appeals, District of Columbia.

JANUARY TERM, 1920.

No. 3334.

ROBERT L. DORSEY, APPELLANT,

vs.

DISTRICT OF COLUMBIA, A MUNICIPAL CORPORATION,
AND EDWIN B. HESSE, APPELLEES.

Statement of the Case.

The case has been fairly stated by the appellant, except as to the criminal charge. The appellee Hesse states in his affidavit (R., p. 4), that the liquor was brought into the District in violation of the "Reed Law," and that the case is still pending in the Police Court.

ARGUMENT.

A.

The argument that the Court erred in directing the property seized to be returned to the said defendant does not

appear to have much merit. The defendants are the District of Columbia and Edwin B. Hesse. The latter in his affidavit (Record, page 4) says "that he is the Property Clerk of the Metropolitan Police Department of the District of Columbia; that as such property clerk he is charged by law with the duty of keeping all property or money," etc. While, of course, these defendants are not identical, yet their interest is the same. Hesse is merely an official of the District and the custody of Hesse would necessarily be the custody of the municipal corporation. There is no allegation or claim that the defendant Hesse has any personal or private right in this litigation or in the goods replevied.

The appellant seems to be laboring under a confusion of ideas in regard to notices and motions required under sections 1557 and 1558 in the Code. He has apparently confused the notice of the motion for a return of the property or a one day's notice to be given to the plaintiff or his attorney under section 1557, with a notice required to be given to the officer taking possession provided for under section 1558. A notice of the motion required under section 1557 was given to the attorney for the plaintiff and is found on pages 3 and 4 of the record. The notice given to the marshal, provided for in section 1558, does not appear in the record at all and was never filed in the cause. There is no provision of law that this notice shall be filed or become a part of the record required under the law, section 1558 being merely that notices shall be given the officer that the motion for a return will be made so that he may retain the goods in his possession until the motion for the return shall have been disposed of by the Court. In chronological order, the notice under section 1558 to the officer taking possession that the defendants will make a motion for the return of the property, comes first. This notice was made and was produced at the hearing of this cause below by the appellant and presumably is among the records of the marshal's office. Within two days thereafter, as required by section 1558,

the motion for a return of the property (Record, page 3) was made and filed in the Court pursuant to section 1557, and a copy of this was sent to the appellant's attorney on October 20. Attached to the motion was a notice that the motion would be called for hearing on October 24th, which was Friday, the usual motion day in the Supreme Court. So it appears that the plaintiff had four days' notice of this motion in lieu of the one day's notice on which it might have been heard as provided by section 1557. Counsel for the appellant claimed on the hearing below that he had never received a copy of the motion and notice, but inasmuch as he was in Court in response thereto, the presiding justice proceeded to dispose of the motion as set out in the record.

For the convenience of the court sections 1557 and 1558 are set out herewith.

"Sec. 1557. Motion for Return.—On the taking possession of the goods and chattels by the marshal or coroner, by virtue of the writ of replevin, the defendant may, on one day's notice to the plaintiff or his attorney, move for a return of the property to his possession; and the court may thereupon inquire into the circumstances and manner of the defendant's obtaining possession of such property, and if it shall seem just may order the property to be returned to the possession of the defendant, to abide the final judgment in the action, and may, in its discretion require the defendant to enter into an undertaking, with surety or sureties, similar to that required of the plaintiff upon the commencement of the action, and in such case a judgment for the plaintiff shall be rendered against the surety or sureties, as well as against the defendant. If it shall appear that the possession of the property was forcibly or fraudulently obtained by the defendant, or that the possession, being first in the plaintiff, was procured or retained by the defendant without authority from the plaintiff, the court may refuse to order the return. The defendant may also, on similar notice, object to the sufficiency of the security in the undertaking, and the court may require additional security, in default

of which the property shall be returned to the defendant, but the action may proceed as if the property had not been taken."

"Sec. 1558. Officer's Duty. If the defendant shall notify the officer taking possession of the property, in writing, of his intention to make either of the motions aforesaid, it shall be the duty of the officer to retain possession of the property until said motion shall be disposed of, provided that the same shall be filed and notice given, as aforesaid, to the plaintiff or his attorney, within two days thereafter."

Under law rule XII, par. 3, the marshal is required to retain for three days property taken under a writ of replevin, so that the notices and motions may be made as provided in sections 1557 and 1558 of the Code.

The appellant also argues that the section of the Revised Statutes creating a property clerk and prescribing his duties does not justify the order for the return of the goods replevied. It may be that a strictly literal interpretation of sections 400 to 424, inclusive, R. S. D. C., might not justify the retention by the property clerk, but it is very obvious such was the intention of the statute. It has been construed in various *nisi prius* decisions that it was the intention of the law that property in the possession of the property clerk, which was evidence in criminal action, could be retained by him until the criminal cause was disposed of. It may be that the property in this case was not feloniously obtained, because the bringing of it into the District was a misdemeanor, and not a felony; that it was not property lost or abandoned, but certainly whiskey brought into the District in violation of the Reed amendment was the proceeds of crime, or comes so close to so being that the dividing line cannot be well distinguished.

Certain sections of the Revised Statutes, D. C., are here set out for the convenience of the Court:

"Sec. 409. All property, or money alleged or supposed to have been feloniously obtained, or which shall be lost or abandoned, and which shall be thereafter taken into the custody of any member of the police force, or the police or criminal court of the district, or which shall come into such custody, shall be, by such member, or by order of the court, given into the custody of the property clerk and kept by him."

Abert, p. 381.

"Sec. 414. Whenever property or money shall be taken from persons arrested, and shall be alleged to have been feloniously obtained, or to be the proceeds of crime, and whenever so brought with such claimant and the person arrested before any court for trial, and the court shall be satisfied from evidence that the person arrested is innocent of the offense alleged, and that the property rightfully belongs to him, said court may, in writing, order such property or money to be returned, and the property clerk, if he have it, to deliver such property or money to the accused person himself, and not to any attorney, agent, or clerk of such accused person."

Abert, p. 381.

"Sec. 415. If any claim to the ownership of such property or money shall be made on oath before the court, by or in behalf of any other persons than the persons arrested, the accused person shall be held for trial or examination, such property or money shall remain in the custody of the property clerk until the discharge or conviction of the persons accused."

Abert, p. 381.

"Sec. 416. All property or money taken on suspicion of having been feloniously obtained, or of being the proceeds of crime, and for which there is no other claimant than the person from whom such property was taken, and all lost property coming into possession of any member of the police force, and all property and money taken from pawnbrokers as the proceeds of crime, or from persons supposed

to be insane, intoxicated, or otherwise incapable of taking care of themselves, shall be transmitted as soon as practicable to the property clerk, to be duly registered and advertised for the benefit of all parties interested, and for the information of the public as to the amount and disposition of the property so taken into custody by the police."

Abert, p. 382.

"Sec. 420. When animals or articles of property (except perishable property), other than money, returned to the property clerk as the proceeds of crime, are shown by sufficient evidence to be necessary for the current use of the owner and not for sale, the Commissioners have (board of police has) power, in their (its) discretion, to authorize the property clerk to place the same in the custody of the owner, upon sufficient bonds being given by the owner in the sum of twice the value of the property, conditioned for the production of the same at any time within one year, when required for use in court as evidence in any proceedings thereon."

Abert, p. 382.

"Sec. 423. If any property or money placed in the custody of the property clerk shall be desired as evidence in any police or other criminal court, such property shall be delivered to any officer who shall present an order to that effect from such court; but such property shall not be retained in the court; but shall be returned to the property clerk, to be disposed of according to the provisions of this chapter."

Abert, p. 382.

"Sec. 424. Any property or money returned to the property clerk as the proceeds of crime, and which shall not be called for as evidence by any proceeding in the courts of the District within one year from the date of such return, may unless specially claimed by the owner within that time, be thereafter treated as other unclaimed, abandoned, or lost property or money, as provided in this chapter."

Abert, p. 382-383.

B.

But whatever the effect of these provisions of the Revised Statutes may be it is very evident that under sections 1557 and 1558, above set out, the Court has complete control over its process and may order the property to be returned to the appellant if, in the judgment of the Court, the ends of justice are best served by such a course.

Section 1557, it will be noted, is a re-enactment of the Maryland act of 1785 which was passed upon by this Court in the case of the Commission and Stock Company against Moore (13 App., 78, 83). In that case furniture and paraphernalia were seized by the police to be used as evidence against certain defendants charged in criminal proceedings in the police court with conspiracy to defraud whomsoever they might be able by means of the article seized. The Commission Company, claiming to be a corporation, brought replevin for the articles seized. The power of the Court over its own process and to direct the suspension of the writ and the holding of the articles seized until a trial could be had of the criminal cause, was fully discussed in an able opinion by Mr. Chief Justice Alvey. The Court says (page 82):

“The mere temporary suspension of the execution of the writ of replevin, to subserve a great public purpose, it may be a public necessity, is no denial of the right of property in the plaintiff; and the property being in the custody of the law, and retained for the promotion of public justice, the attempt to get the articles out of the possession of the officers of the law before they can be used in evidence against the parties accused, is an abuse or misuse of legal process, which the court will prevent upon proper application.”

13 App. D. C., p. 82.

The power of the Court also under the Maryland act of 1785, corresponding to present section 1557 of the Code, was touched upon. The Court said:

"There is nothing in the action of replevin that precludes the court from the exercise of power over its process to prevent it being abused or misused, if sufficient reason be shown for the action of the court. Even after the writ of replevin is executed, and the property claimed is delivered to the plaintiff under the writ, the court has full power given it by statute, upon motion of the defendant for a return of property, to inquire into the circumstances and manner of the defendants obtaining possession of such property; and if the possession was rightfully obtained, and the property lawfully held by the defendant at the time it was replevied, the court is authorized to direct the return of the property to the defendant. Act of Md. of 1785, Ch. 80, Sec. 14; 2 Kilty L. Md. The manifest object of that provision of the statute is to prevent a wrong being done by taking the property out of the possession of the defendant before the right to possession in the plaintiff could be tried, and determined in regular course of proceeding. And if property could be adjudged to be returned to the defendant after the execution of the writ and the delivery of the property thereunder to the plaintiff, but before the trial as to the right of possession, it is difficult to perceive a good reason why a temporary stay or suspension may not be ordered before the writ is executed, for adequate cause shown."

It is respectfully submitted that the decision of the Court below is correct and should be affirmed.

F. H. STEPHENS,
Attorney for Appellees.

